

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
No. 3:14-CV-288-MR-DLH

CATHERINE DIEHL,)	
)	
Plaintiff,)	
)	
v.)	DEFENDANT’S
)	RULE 56(d) MOTION
WILLIAM K. DIEHL, JR.,)	
)	
Defendant.)	
_____)	

William K. Diehl, Jr. (“Defendant”), respectfully submits this Defendant’s Rule 56(d) Motion pursuant to Rule 56(d) of the Federal Rules of Civil Procedure (2015). Defendant states the following in support of this Motion:

1. Catherine L. Diehl (“Plaintiff”) filed this lawsuit on June 3, 2014, alleging that Defendant breached a Contract of Separation and Property Settlement Agreement (“Agreement”) the parties executed in August 2004. [Doc. 1].

2. Defendant denied liability, asserted various affirmative defenses (including common law marriage and unclean hands), and counterclaimed to recover all payments Plaintiff received from him under the Agreement after she and an adult male widower, James H. Shuttleworth (“Mr. Shuttleworth”), became married under the common law of South Carolina. [Doc. 11].

3. This Court entered a Pretrial Order and Case Management Plan on September 9, 2014, which established a discovery deadline of May 1, 2015; a

mediation deadline of May 15, 2015; and a motions deadline of June 1, 2015. [Doc. 18, p. 1].

4. Plaintiff subsequently filed her pending Plaintiff's Motion for Summary Judgment on February 19, 2015. [Doc. 24].

5. For the reasons set forth in the Declaration of William K. Diehl, Jr., and the Brief in Support of Defendant's Rule 56(d) Motion and in Opposition to Plaintiff's Summary Judgment Motion, this Court should delay consideration of any summary judgment motion until after the discovery deadline passes.

6. After consultation, Plaintiff's counsel expressed that he might be willing to have a more in depth discussion regarding the relief requested herein once he reviews Defendant's summary judgment response, but at this point he is not inclined to agree to such relief.

WHEREFORE, Defendant respectfully prays that this Court grant this Rule 56(d) Motion and dismiss the Plaintiff's Motion for Summary Judgment without prejudice to refiling after the close of the discovery period.

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Respectfully submitted this 9th day of March, 2015.

James, McElroy and Diehl, P.A.

/s/ William K. Diehl, Jr.

William K. Diehl, Jr.

N.C. State Bar No. 1187

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that this **DEFENDANT’S RULE 56(d) MOTION** was served upon Plaintiff’s counsel of record via this Court’s CM/ECF system as follows:

Robert E Sumner, IV – robertsumner@mvalaw.com

Trudy H. Robertson – trudyrobertson@mvalaw.com

This 9th day of March, 2015.

James, McElroy and Diehl, P.A.

/s/ William K. Diehl, Jr.

William K. Diehl, Jr.

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